



Tr.C.M.P.No.382 of 2015 &
Cont.P.No.1617 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 02.09.2022

ORDERS DELIVERED ON : 19.10.2022

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

Tr.C.M.P. No.382 of 2015 and
M.P.No.1 of 2015 and
C.M.P.No.20419 of 2018 &
Cont.P.No.1617 of 2015

Tr.C.M.P.No.382 of 2015:

1.M.Srinivasan
S/o Late R.Mohanam

2.M.Kumaran
S/o Late R.Mohanam

3.M.Vasu
S/o Late R.Mohanam

... Petitioners/
Defendants 2, 3 & 6

..Vs..

1.Gajalakshmi
W/o R.Aadhimoolam

2.Visalakshi
D/o R.Aadhimoolam

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3.Selvakumari
D/o R.Aadhimoolam

4.Santhalakshmi
D/o R.Aadhimoolam

5.M.Dhanalakshmi
W/o Late R.Mohanam

6.M.Meenakshisundar
S/o Late R.Mohanam

7.D.Meenakshi
D/o Late R.Mohanam

8.M.Vijayalakshmi
D/o Late R.Mohanam

9.Sankar Ganesan
S/o Late R.Mohanam

... Respondents/
Defendants 1,4,5,7 & 8

10.B.Annamallai, M.A., B.L.,
Advocate & Notary Public

(R10 suo-motu impleaded vide order of this Court dated 18.06.2015 made in
Tr.C.M.P.No.382 of 2015)

11.The Inspector General of Registration
Chennai.

(R11 suo-motu impleaded vide order of this Court dated 10.07.2015 made in



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12.The District Collector
Vellore.

(R12 suo-motu impleaded vide order of this Court dated 21.07.2015 made in Tr.C.M.P.No.382 of 2015)

13.The Secretary to Government of Tamil Nadu
Department of Commercial Taxes &
Registration, Fort St.George
Chennai – 9.

14.The Registrar General
High Court, Madras.

(RR13 & 14 suo-motu impleaded vide order of this Court dated 06.09.2016 made in Cont.P.No.1617 of 2015 and Tr.C.M.P.No.382 of 2015)

... Respondents

Prayer:- Transfer Civil Miscellaneous Petition is filed under Section 24 of C.P.C., to withdraw the suit pending in O.S.No.139 of 2015 on the file of the Principal District Munsif Court, Vellore (O.S.No.49 of 2015, on the file of the Vacation Court, Vellore) and transfer the same to the file of the City Civil Court at Chennai.

For Petitioners	: Mr.Murali Kumaran for M/s McGan Law Firm
For Respondents	: M/s Raj & Raj Associates for RR1 to 4 and R10 Mrs.E.Indhumathi, GA for RR11 & 12 Mr.S.Giridharan for R14

Cont.P.No.1617 of 2015:

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1.M.Srinivasan
S/o Late R.Mohanam

2.M.Kumaran
S/o Late R.Mohanam

3.M.Vasu
S/o Late R.Mohanam

... Petitioners

..Vs..

1.Gajalakshmi
W/o R.Aadhimoolam

... Respondent

Prayer:- Contempt Petition is filed under Sections 10 & 11 of the Contempt Court Act, to punish the contemnor for contempt and deliberate violation of the order of this Court dated 18.06.2015 passed in M.P.No.1 of 2015 in Tr.C.M.P.No.382 of 2015.

For Petitioners : Mr.Murali Kumaran
for M/s McGan Law Firm

For Respondent : M/s Raj & Raj Associates
for R1



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COMMON ORDER

The Transfer Civil Miscellaneous Petition has been filed to withdraw the suit pending in O.S.No.139 of 2015 on the file of the Principal District Munsif Court, Vellore (originally filed as O.S.No.49 of 2015, on the file of the Vacation Court, Vellore) and transfer the same to the file of the City Civil Court at Chennai or any other competent Court.

2. The Contempt Petition has been filed to punish the contemnor for deliberate violation of the order of this Court, dated 18.06.2015 passed in M.P.No.1 of 2015 in Tr.C.M.P.No.382 of 2015.

3. The brief facts of the case are that the petitioners and the respondents 5 to 8 are the legal heirs of one R.Mohanam and the respondents 1 to 4 are the legal heirs of one R.Aadhimoolam who is the brother of the said R.Mohanam. The present Transfer Petition was filed on the following grounds, namely, the Counsel for the respondents 1 to 4 viz., Mr.B.Annamallai, who is the practicing Lawyer in the Vellore Bar Association had drafted the cancellation



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deed, dated 13.03.2014, registered as Doc.No.3180 of 2014 on the file of the S.R.O. Vellore; had issued the notice, dated 25.03.2014; had issued the Rejoinder dated 10.04.2014; had appeared in the suit filed by the petitioners' father in O.S.No.313 of 2014; had filed the suit in O.S.SR.No.12067 of 2014; and had also filed the suit before the Vacation Court in O.S.No.49 of 2015; and he is threatening the Advocates in the Lower Court not to appear as he is also the President of the local Bar Association in Vellore and was also the Government Pleader and therefore, prayed for withdrawal of the suit from the file of the Principal District Munsif Court, Vellore and transfer the same to the file of the City Civil Court at Chennai or any other competent Court.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. The records reveal that a brother Judge of this Court (Justice N.Kirubakaran), who heard the transfer petition, has treated the same as “Specially Ordered” matter till his retirement, and impleaded the said



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Mr.B.Annamallai, Advocate by order, dated 18.06.2015, observing that,

“In view of the allegations made in Paragraph No.9(E) of the affidavit against Mr.B.Annamallai, Advocate, who is also said to be using the emblem of Tamil Nadu Government in his letter head even for sending private notice. It is appropriate to implead the said Advocate as 10th the respondent suo motu...”

Though the matter was listed many times and notice was also duly served, the said Mr.B.Annamallai, did not choose to refute the allegations.

6. Since the issue in the suit which was sought to be transferred, relates to unilateral cancellation of a Settlement Deed, dated 23.01.1974, which was executed in the year 1974, registered as Document No.1531/1974, on the file of SRO, Vellore and after a period of 40 years, this Court (Justice N.Kirubakaran) impleaded the Inspector General of Registration as the 11th respondent by order dated 10.07.2015 in the above Transfer Petition, by observing as under:-

“2. Moreover, there is a judgment by this Hon'ble Court in D.V.Loganathan v. Sub Registrar reported in 2014 3 CTC



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113(Mad), wherein it has been held that settlement cannot be unilaterally cancelled. There is a circular 18339/C1/2012 dated 25.04.2012 and circular No.18223/C1/2013-3 dated 8.11.2013 issued to the Registrar asking to ascertain the competence of the person who is executing the document. In this matter, the settlement deed was executed as early as on 23.1.1974 in favour of the petitioners and it was allowed to be cancelled after forty years unilaterally on 13.3.2014 without notice or consent of the settlee, contrary to the above judgment and circulars.

3. In view of that, whether any action has been taken against the Joint sub Registrar-I during 2014 on 13.03.2014 for the cancellation of the settlement deed after 40 years unilaterally and if no action has been taken, action has to be taken after issuing appropriate notice as per law. It is also noted that the property was settled in 1974 as vacant land and settlement deed dated 23.01.1974 was cancelled on 13.3.2014, showing the property as a vacant land. Even though a cinema theatre is functioning in the said property, it is not known as to whether the Joint Sub-Registrar registered the document after visiting the property to ascertain the status



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of the property or not. Post the case on 16.07.2015 for filing response by the learned Government Pleader.”

7. This Court (Justice N.Kirubakaran) after impleading the Inspector General of Registration as the 11th respondent vide order, dated 10.07.2015, has also passed the following order on 21.07.2015:-

“2.It is seen that the property was settled in favour of the petitioners' father Mohanam by one Adhimoolam on 23.01.1974. it is contended that after the settlement, R.Mohanam constructed a Cinema Theatre under the name and style of “Srinivasa Theatre” in Vellore in the year 1983 and is being run as on date. Meanwhile, the said Mohanam passed away on 03.01.2015 leaving behind the petitioners and respondents 5 to 9 as his legal heirs and they are enjoying the property. When things stands so, the said R.Adhimoolam, who settled the property in favour of R.Mohanam as early as on 23.01.1974 and after 40 years, unilaterally cancelled the settlement deed dated 13.03.2014, showing the property as a vacant site by suppressing the fact that R.Mohanam, constructed a cinema Theatre called as “Srinivasa Theatre.” The property which is stated to be worth about Rs.20 crores. The Joint Sub Registrar, Vellore, without



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*even verifying material facts registered the cancellation of settlement deed contrary to the full Bench Judgment of this Court in **M/s.Latif Estate Line India Ltd.rep., by its Managing Director Mr.Habib Abdul Latif v. Mrs.Hadeeja Ammal and 2 Others reported in 2011-1-L.W.673**, wherein, it has been held that the documents cannot be unilaterally cancelled. There is a circular No.19339/C1/2012 dated 25.04.2012 and Circular No 18223/C1/2013-3 dated 08.11.2013 issued to the Registrar asking to ascertain the competence of the person who is executing the document. If the Joint Sub Registrar, Vellore has verified the competence of the executor of the cancellation deed, the said cancellation deed would not have been registered. Moreover, the settlement deed which was executed 40 years ago cannot be unilaterally cancelled without notice to the beneficiaries. Therefore, the deed should be with malafide motive with a design and also due to conspiracy.*

3. This Court by order dated 10.07.2015 wanted to know as to whether any action has been taken against the Joint Sub Registrar-I, Vellore, who registered the cancellation deed during 2014.

4. This Court passed the order on 10.07.2015 and it seems that the said officer is said to have been charge



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sheeted on 16.07.2015 under 17(B). Hence the appropriate officer has to file an affidavit, for giving the status of the proceedings in the next hearing.

5. The learned counsel for the petitioners would submit that action is sought to be taken pursuant to the representation given by the respondents 1 to 4 to cancel the licence of cinema theatre granted in favour of the petitioners. Since the representation has been given by the respondents 1 to 4 to the District Collector, Vellore, the District Collector, Vellore, is suo motu impleaded as 12th respondent. Mr.Venugopal, learned Special Government Pleader, takes notice on behalf of the 12th respondent. Therefore, the private respondent as well as the official respondent are directed not to act upon the order of injunction passed by the Trial Court until further orders.

6. It is very unfortunate to note that even after categorical dictum made by the Division Bench of this Court as early as 2011, it is seen that a number of documents are sought to be cancelled unilaterally without notice to the beneficiaries. This Court would like to know as to how many documents have been unilaterally cancelled and registered through out Tamil Nadu from



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*2011 onwards which is contrary to in Full Bench Judgment of this Court in **M/s.Latif Estate Line India Ltd.rep.by its Managing Director Mr.Habib Abdul Latif v. Mrs.Hadeeja Ammal and 2 Others reported in 2011-1- L.W.673.** So the Inspector General of Registration is directed to file an affidavit in this regard."*

8. It can also be seen from the records that this Court (Justice N.Kirubakaran) has impleaded the Secretary to the Government of the Commercial Taxes and Registration Department as 13th Respondent by order, dated 06.09.2016.

9. Perusal of records shows that Dr.R.Selvaraj, the Inspector General of Registration, in April 2017, filed an affidavit enclosing therewith the unilateral cancellations done after the judgment of this Court in **M/S.Latif Estate Line India Ltd vs Mrs. Hadeeja Ammal** reported in 2011 (1) LW 673 and also a list which contains alarming number of unilateral cancellation done by the Registration Department.

10. Dr.R.Selvaraj, the Inspector General of Registration, who was



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impleaded as 11th respondent had filed an affidavit stating that “registration of revocation of unilaterally executed 'Settlement' has not been prohibited by the law, and registration of such deeds does not tantamount to contravening of Hon'ble High Court order in M/s.Latif Estate Line India vs. Mrs.Hadeeja Ammal. Therefore, the act of Inspector General of Registration in filing such an affidavit before this Court is highly condemnable and the Registrar of this Court, who has been impleaded as 14th respondent in the Transfer Petition, by order dated 06.09.2016, passed by this Court (Justice N.Kirubakaran), was directed to place the papers before the concerned Bench for initiation of *suo motu* contempt proceedings against Dr.R.Selvaraj. The Secretary to the Government who was impleaded as the 13th respondent in the Transfer Petition was also directed to initiate appropriate disciplinary proceedings against the Dr.R.Selvaraj for filing reckless affidavits and abetting injurious registrations which are against public policy and the law laid down by this Court.

11. The Inspector General of Registration was also directed to initiate proceedings by giving notices to all the parties concerned with respect to unilateral



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cancellations of Settlement Deeds, that were registered and executed after the judgment in *M/s.Latif Estate Line India Ltd.*, as retaining of such documents on the file of the Registration Department is against the settled law and public policy.

12. It was further pointed out by the petitioners that the private contesting respondents viz., respondents 1 to 4 in the above Transfer Petition, had earlier filed a suit in O.S.SR.No.12067 of 2014, on the file of the Principal District Munsif Court, Vellore and had abandoned the said suit after many representations which is also evident from page No.8 of the papers filed in the Typed Set filed along with the Transfer Petition the said fact, was also not disputed by the respondents 1 to 4. Further, the respondents 1 to 4 in their counter affidavit dated 18.07.2015, contended that:-

*“10..... (c)It is well settled law that an un-numbered
plaint is non-est in law and can be abandoned. It is therefore
well within our purview to approach the Court at any time to
prosecute and enforce our rights. Therefore, the earlier plaint
was abandoned and fresh plaint was filed before a Vacation*



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Court at Vellore at the suitable time.

(d).....

(e) An un-numbered plaint is not taken on the file of any Court and does not constitute a suit. It can therefore be given up any time before numbering.”

13.This issue being a serious one concerning the right of the litigants to knock the doors of the judiciary on their choice and abandon the same at their will, the Counsel appearing for the petitioners pointed out that the suit in O.S.SR.No.12067 of 2014, was filed before the Regular Court and after many returns and compliances, the same was abandoned and a fresh suit was filed before the Vacation Court and an order was obtained by suppressing the filing of the earlier suit. This admittedly amounts to forum shopping.

14.Therefore, in the light of Section 26 C.P.C., which says that the suit shall be initiated by presentation of plaint, in view of the bar contained under Order XXIII Rule 1 Sub Rule 4 of CPC, that once the plaint is abandoned or



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withdrawn, the plaintiff is precluded from instituting any fresh suit in respect of the same subject matter or part of the claim, I am to hold that a cogent reading of Section 26 with Order XXIII Rule 1 Sub Rule 4 of C.P.C., prohibits filing of fresh suit even when the previous suit has been abandoned without numbering. In this regard, the Registrar General is directed to circulate this order to all the lower Courts in Tamil Nadu.

15. Further, the Inspector General of Registration is directed to initiate appropriate action after giving notice to all concerned, as permissible in law against all those concerned and involved in the execution and registration of the unilateral cancellation of document viz., cancellation deed, dated 13.03.2014, registered as Doc. No.3180/2014 on the file of the SRO, Vellore, in which admittedly there is a clear suppression of the fact of running a Cinema Theatre in the subject property, when the very same persons, who are involved in the execution of the Cancellation of Settlement Deed, dated 13.03.2014 and the subsequent Settlement Deed, dated 16.09.2014 have shown the Cinema Theatre in the Interlocutory Application, I.A.No.60 of 2015 on the file of the Principal



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District Munsif Court, Vellore.

16. Even though respondents 1 to 4 have appeared initially through their counsels' M/s.Raj & Raj Associates and have filed a counter, the records reveal that neither before me nor before my predecessor, they have subsequently appeared.

17. In the case of *Arivanandan vs. Sathaya Pal*, reported in (1977) 4 SCC 467, the Honourable Supreme Court has held that frivolous litigation should be nipped at the bud itself. It is high time that litigations that are apparently an abuse of process of law cannot be allowed to occupy the time of the Court and have the domiciles sword hanging over the heads of the defendants and forcing them to spend their time and money. Therefore, the suit in O.S.No.139 of 2015 (O.S.No.49 of 2015 on the file of the Vacation Court, Vellore) on the file of the Principal District Munsif Court, Vellore, which is an apparent abuse of process of law and a fraud played on the Court by the plaintiffs in collusion with their counsel, is necessarily to be struck off. The suit in O.S.No.139 of 2015 on the

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file of the Principal District Munsif Court, Vellore, is struck off. Since the suit itself is struck off, no further orders are required in the Transfer Petition and the contempt petition. Accordingly, this Transfer Civil Miscellaneous Petition as well as the Contempt Petitions are closed. No Costs. Consequently, connected Miscellaneous Petitions are also closed.

19.10.2022

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
Nvsri/pm

Note: The typographical error is corrected.
After carrying out the corrections issue fresh order.

To

1. The Principal District Munsif Court, Vellore
2. The Inspector General of Registration
Chennai.
3. The District Collector
Vellore.
4. The Secretary to Government of Tamil Nadu
Department of Commercial Taxes &
Registration, Fort St. George

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5.The Registrar General
High Court, Madras.



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J.NISHA BANU,J.

Jer/Nvsri/pm

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